South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

Vol. 19 May 28, 2002 No. 21

MAJOR ISSUES FROM THE 2002 LEGISLATIVE SESSION

These summaries highlight some of the major bills considered by the General Assembly this year. Please note that many issues which are included in this document are addressed in more than one bill. We have highlighted bills which have made the most progress towards passage.

This document will be revised and expanded. Major legislation is summarized here in a format that is intended to be more accessible than a simple reading of the bills, joint resolutions, and acts. This report, which highlights legislative activity through *Friday, May 24, 2002*, is a guide to, not a substitute for, the full text of the legislation summarized.

OFFICE OF RESEARCH
Room 213, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 734-3230

CONTENTS

APPROPRIATIONS

NOTE: The General Assembly approved H.4878, the budget plan for 2002-2003, and H.4879, a comprehensive bill which codifies new provisions as well as numerous provisions which have been included as temporary provisos in previous Appropriation Acts. H.4879 also includes the plan for distributing revenue from the S.C. Education Lottery.

THE 2002-03 GENERAL APPROPRIATION BILL (H.4878)

Faced with a shortfall of around $320 million, the House and Senate adopted the compromise plan presented by the conference committee on the 2002-2003 budget. The plan has been ratified and sent to the Governor. Most agencies received base reductions. Highlights of the adopted bill are as follows (***also see Lottery funding plan included under H.4879, this section of this document***):

- Recurring revenue is $77.6 million. Non-recurring revenue totals $251.6 million; sources for non-recurring revenue include but are not limited to (figures are rounded): interest from restricted funds ($50.3 million); Barnwell Fund ($39.6 million); unrestricted taxable proceeds of Health Care Trust Fund ($101 million); Tobacco Settlement Fund interest and principal ($6.2 million); Insurance reserve fund premium redirection ($27.9 million);
- Medicaid is fully funded (including $23.2 million for SilverCard Plus);
- State employees will receive no pay increase;
- A temporary proviso requires the State Board of Education to establish a task force to study a suggested uniform beginning date for the annual school term. The task force is to report to the Board by January 1, 2003. (Also see "School Start Date" under the Budget Codification Bill, H.4879, this section of this document.)
- Base student cost under the Education Finance Act is funded at $2,033;
- Parts, fuel and maintenance for school buses are funded at $5 million;
- Education Accountability Act Programs (summer school) are funded at $7 million.

STATUS: H.4878 has been approved by the House and Senate, ratified (R.373), and sent to the Governor.

THE BUDGET PROVISO CODIFICATION BILL (H.4879)

The General Assembly approved H.4879, the *Budget Proviso Codification Bill,* codifying new provisions as well as numerous provisions that have been a part of previous General Appropriation Bills. This bill also includes the 2002-2003 spending plan for Education Lottery Account proceeds.

Highlights of this comprehensive bill are as follows:

THE LOTTERY REVENUE DISTRIBUTION PLAN:

- Total lottery revenue for Fiscal Years 2001-2002 and 2002-2003 is $179 million recurring funds and $80 million non-recurring funds;
- Tuition assistance at technical schools and two year institutions is funded at $34 million;
- LIFE Scholarships are funded with an additional $40 million;
- HOPE Scholarships are funded at $5.8 million;
- Need-Based Scholarships are funded at $3 million (non-recurring funds);
- Palmetto Fellows Scholarships are funded at $5 million;
- National Guard Scholarships are funded at $1.5 million;
- Tuition Grants are funded at $3 million (non-recurring funds);
- Teacher Grants are funded at $2 million (non-recurring funds);
- Endowed Chairs at Research Universities are funded at $30 million;
- Technology improvements at public four-year and two-year colleges and state tech schools are funded at $21.7 million (includes $10.6 million non-recurring funds);
- Repair and maintenance at historically Black colleges funded at $3 million;
- Research and technology at S.C. State University funded at $3 million (includes $1 million non-recurring funds);
- K-12 Education Accountability Act programs funded at $23.9 million;
- School buses are funded at $29 million (includes $15 million non-recurring funds);
- K-5 Reading, Math, Science, and Social Studies programs are funded at $32.9 million;
- ETV digitalization is funded at $18.5 million (non-recurring funds);
- State Aid to County Libraries is funded at $1.5 million;
- Department of Alcohol and Other Drug Abuse Services is funded at $1 million;

FIRST STEPS TO SCHOOL READINESS PROGRAM

- For Fiscal Year 2002-2003 only, from non-recurring revenue identified in the General Appropriations Act (H.4878), $7 million is appropriated to the First Steps for School Readiness Program.

SOUTH CAROLINA RESEARCH CENTERS OF ECONOMIC EXCELLENCE

- Creates a nine member Research Centers of Excellence Review Board and creates the Centers of Excellence Matching Endowment; staff support will be provided by the Commission on Higher Education;
- The Endowment will be funded annually by appropriations from the South Carolina Education Lottery Account (in an aggregate amount not to exceed $200 million by 2010) and managed by the State Treasurer, subject to awards from the Endowment;
- South Carolina's senior research universities may apply for awards from the Endowment as provided in the bill;

- The Board is responsible for recommending annually to the Budget and Control Board for approval a schedule by which applications for funding are received and awarded on a competitive basis; for awarding of matching funds as provided in the bill; and for oversight and operation of the Endowment.

UNIFORM SCHOOL START DATE
(See also under H.4878, this section of this document)

- Provides a General Assembly declaration that it is in the best interests of South Carolina students for a uniform beginning date for the annual school term to be developed and adopted by the State Board of Education (the Board) to be implemented in all State public schools;
- Directs the Board to establish a task force to make recommendations including the desirability of and if agreed upon a suggested uniform beginning date for the annual school term. The task force is directed to report its findings to the Board by October 15, 2002.

HOPE SCHOLARSHIPS

- These scholarships are authorized in an amount of up to $2500, plus a $150 book allowance, to cover the cost of attendance during the first year of attendance only, to an eligible student attending a four-year institution who does not also qualify for a LIFE Scholarship or a Palmetto Fellows Scholarship;

STATUS: H.4879 has been approved by the House and the Senate and has been enrolled for ratification.

NO PART II'S IN GENERAL APPROPRIATION BILL (H.4766)

The House approved H.4766, a House Resolution which expresses the sense of the House that no permanent law, i.e., Part II's, should be included in the General Appropriation Bill for fiscal year 2002-2003, when the bill is under consideration in the House.

STATUS: Approved by the House.

TRANSFER OF MONIES FROM EXTENDED CARE MAINTENANCE FUND (H.5003)

The House approved and sent to the Senate H.5003. This joint resolution directs the State Treasurer to transfer the sum of sixty-one million dollars from the Extended Care Maintenance Fund (funds set aside for long-term maintenance of the Barnwell low-level nuclear waste disposal facility) to the State general fund to

offset fiscal year 2001-2002 mid-year sequestrations as imposed by the State Budget and Control Board. The resolution further provides that if the Extended Care Maintenance Fund is insufficient to meet its obligations due to this transfer, the State is solely responsible for repaying an amount to restore the transferred funds.

STATUS: H.5003 was approved by the House and is pending in the Senate Finance Committee.

STATE CAPITAL IMPROVEMENT BONDS (H.3765)

The House approved and sent to the Senate H.3765. This legislation requires that a bill authorizing the issuance of state capital improvement bonds must have a certificate attached from the Office of State Budget, certifying that certain conditions are met regarding the dollar amount of bond authorizations in the bill and regarding the debt service for the bonds. The bill requires this certificate before any bill or joint resolution authorizing the issuance of state general obligation bonds may be reported by the House Ways and Means Committee, given third reading in the House, reported by the Senate Finance Committee, given third reading in the Senate, and reported from conference or free conference committee.

STATUS: H.3765 was approved by the House and is pending consideration in the Senate Finance Committee.

BUSINESS

RIGHT TO WORK LAWS (H.3142)

The Conference Committee appointed to address House and Senate differences on H.3142 issued a report that was adopted by the Senate on May 23. This legislation revises enforcement of South Carolina's right to work laws which prohibit practices that have the effect of making employment contingent upon whether or not an employee is affiliated with a labor union or organization. The legislation broadens the authority of the Department of Labor, Licensing and Regulation (LLR) to investigate alleged violations of the Right to Work laws. The Director of the Department of Labor, Licensing and Regulation is authorized to hold hearings in order to investigate the merits of a claim of violations. After a complaint has been filed with the Department, the Director or his designee is authorized to enter a workplace in order to evaluate compliance. Any effort to obstruct the Director's duty to investigate is a violation of Right to Work laws. After a complaint has been filed, if the Director or his designee is denied admission, a warrant may be obtained.

The Director is authorized to assess a violator of Right to Work provisions a civil penalty of not more than one hundred dollars for each offense. The Director shall

promulgate regulations establishing procedures for administrative review of civil penalties assessed. The Department's final action may be appealed to the Administrative Law Judge Division.

The legislation broadens the scope of persons prohibited from participating in unlawful labor agreements that violate an employee's right to work by allowing for penalties and/or causes of action against any person for violations. Current law allows for such actions to be taken against employers, only.

The legislation revises a provision under which an employer may, upon the written assignment of the employee, deduct membership dues in a labor organization from the employee's wages so as to provide that, after one year, an employee has the absolute right to revoke written assignment for deduction of such dues.

STATUS: On May 23, the Senate adopted the Conference Committee report on H.3142.

STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT (S.1200)

This bill increases from five percent to five and one-half percent of the general revenues of the State for the fiscal year next preceding (with specified exclusions), the limitation on general obligation debt imposed by the State Constitution. The additional debt service capacity available at any time as a consequence of the increase is available only for the repayment of general obligation bonds issued to provide infrastructure for economic development within the State.

STATUS: S.1200 has been approved by the House and Senate and has been signed by the Governor.

PORT EXPANSION (S.926)

This joint resolution, approved by both the House and the Senate, requires the State Ports Authority to begin environmental impact studies and other required actions in regard to the permitting process to locate new terminal facilities on the west bank of the Cooper River at locations it determines appropriate and with a capacity in conformance with available land at the proposed location or locations. The resolution provides that if the locations identified are on real property not owned by the State Ports Authority (the Authority), the Authority is authorized to begin the process of acquiring such property. The resolution requires that upon completion of the permitting process, the Authority shall report to the General Assembly concerning the new terminal facilities, including a request for any state funding necessary to complete the projects and the form such funding is requested to take. The resolution requires that the Authority provide the General Assembly with a summary of criteria developed for use in delineating the needs, requirements, and

specifications of port expansion. The resolution provides that the permit application may not exclude or prejudice unreasonably the acceptance of any site. The resolution directs appropriate state agencies to explore opportunities for federal funding of the infrastructure enhancements for port expansion on the western side of the Cooper River. The resolution also provides that the State Budget and Control Board shall take appropriate steps to provide indemnification from personal liability to the Authority board members related to their service in regard to funding provided to the South Carolina Transportation Infrastructure Bank for the Cooper River Bridge.

STATUS: S.926 was approved by both the House and the Senate and has been signed by the Governor.

RESEARCH CENTERS OF ECONOMIC EXCELLENCE (H.4879)

(See summary of H.4879 under "Appropriations" section of this document)

CAMPAIGN FINANCE

The House passed H.3144 and sent the bill to the Senate where it has been amended and read for the second time. The legislation provides for various campaign finance revisions, most notably:

Disclosure by Political Parties: Both House and Senate versions require political parties, legislative caucus committees, and party committees to disclose anything of value received after a $500 threshold is reached. This includes all funds received for operating expenses, "party-building" expenses, and other funds commonly referred to as "Soft Money."

Mandating Reporting of Independent Expenditures: Both House and Senate versions add a "person who makes independent expenditures of $500 or more during an election cycle for the purpose of influencing the outcome of an elective office" to the group of persons and entities that must file disclosure reports.

Scope of Reporting Independent Expenditures: The House version further defines the term "influence the outcome of an elective office" for purposes of clarifying who has to file disclosure reports. This definition includes the "magic words" approach to determining who must file disclosure reports and conforms to the Fourth Circuit Court of Appeal's interpretation of *Buckley v. Valeo*. This definition would also include campaign slogans or individual words that can only reasonably be interpreted to urge the election or defeat of a clearly identifiable candidate such as "Smith 2000" or "Jones-A man for the People!". This definition would incorporate bumper stickers and slogans that clearly convey an unmistakable message to vote for or against the identified candidate and is therefore substantially

related to the recognized interest served by reporting and disclosure requirements. The Senate version is identical but also defines the term "Coordinated with" as discussion or negotiation between a candidate his agent and a person concerning a political communication's contents, timing, location, mode, intended audience, or volume.

Reporting by Ballot Measure Committees: Both House and Senate versions create and define "ballot measure committees" and makes them subject to reporting and disclosure requirements. This definition includes a person or persons who receives contributions or makes independent expenditure totaling $2,500 or more during an election cycle for the purpose of influencing the outcome of a ballot measure. This provision clarifies the status of ballot measure committees. The status of such committees is unclear under current law as a result of the 1999 *Legacy Alliance* case regarding the video poker ballot measure. The Senate version adds the requirement that candidates and committees must maintain an account of the occupation of each person making a contribution in addition to the other requirements. The House version eliminates the current requirement that ballot measure committees place the name and address of the committee on printed matter. The Senate version leaves this existing requirement intact.

Penalty Enhancements: Both the House and Senate versions eliminate the $500 cap on civil penalties for failure to file disclosure reports. Currently, a person who violates this provision must pay a mandatory $100 penalty if the report is not filed within 5 days of due date plus $10 per day after notice is sent to the delinquent filer but only up to a $500 cap. Both the House and Senate versions create a new penalty for campaign practice violations and certain reporting violations. The legislation adds a fine of up to 500% of the amount of contributions and anything of value that should have been reported to the current law which provides for a penalty of not less than $5,000, or imprisonment for not more than 1 year, or both.

State Ethics Commission Requests: Both House and Senate versions provide for several technical changes to the Ethics Act, most of which have been requested by the State Ethics Commission. The Senate version adds provisions relative to the State Ethics Commission and the House and Senate Ethics Committees relating to the moratorium on filing a complaint during the fifty-day period before an election. The amendment allows a person to petition the court of common pleas during this period alleging the violations complained of and praying for appropriate relief by way of a mandamus or injunction. Sanctions are provided for those who file frivolous lawsuits.

Contribution Limits: Current law provides contribution limits of $3,500 for statewide office and $1,000 for any other office. The Senate version provides that within an election cycle, a statewide candidate or committee may not accept contributions over five thousand dollars and non-statewide candidates may not accept contributions of two thousand five hundred dollars ($2,500). Current law provides a candidate may not accept contributions from political parties in excess of $50,000 for statewide office and $5,000 for any other office. The Senate version provides that a candidate may not accept contributions from political parties in

excess of $100,000 for statewide office or $50,000 for non-statewide office. The House version does not revise either contribution limit.

Reporting Campaign Contributions: Current law requires candidates or committees to maintain a list during the period before an election commencing at the beginning of the calendar quarter of the election of all contributions of more than $100. The Senate version revises this requirement to provide the list must include all contributions and expenditures, including those less than $100. The House version does revise the requirement.

Multi-candidate Expenditures: Current law provides party expenditures for multi-candidate promotions for four or more candidates where each candidate receives substantially equal treatment are not included in the contribution limits section of the Ethics Act. These expenditures are limited to the operation of phone banks, preparation, mailing and distribution of campaign materials, and voter registration or ballot information. The Senate version eliminates this exemption entirely, thus making multi-candidate expenditures subject to contribution limitations. The House version does not revise the current provisions.

Personal Use of Campaign Funds: The Senate version provides that ballot measure committees, like candidates, committees, public officials, and political parties, may not use campaign funds to defray personal expenses which are unrelated to the campaign or office. The House version does not revise current provisions.

Use of Campaign Funds by Ballot Measure Committees: The House version includes a new section to the Ethics Act which provides that a ballot measure committee may not use contributions for any purpose other than the purpose for which the committee was originally created, unless the person giving the contribution gives written authorization. Within sixty days after the relevant election or referendum, the remaining funds must be contributed to the State's general fund, contributed to a 501(c)(3) organization, or returned to all contributors pro rata. If a committee violates this provision, the State Ethics Committee may seize the funds and distribute the funds as provided. The Senate version does not include these provisions.

Lobbyists: Current law provides members of the immediate family of the Governor, Lieutenant Governor, other statewide constitutional officers, members of the General Assembly, or director of state departments may not serve as lobbyists during the time the official holds office and for one year after such public service ends. The Senate version eliminates this restriction against family members serving as lobbyists. Instead, the Senate version requires lobbyists who are members of the immediate family of a public official to identify that public official upon registering.

STATUS: H.3144 passed the House on March 1, 2001, and was sent to the Senate where it was amended and given second reading on May 16, 2002. On May 21, the bill was made Special Order and the Senate adjourned debate on the bill on May 22.

CHILD ABUSE/ DOMESTIC VIOLENCE

CHILD ABUSE AND NEGLECT REPORTING REQUIREMENTS FOR MEMBERS OF THE CLERGY (H.5048)

The House approved H.5048 and sent the bill to the Senate where it has been amended and given second reading. This legislation adds members of the clergy to the statutory list of professions and persons who must report suspected instances of child abuse and neglect. The legislation provides that a clergy member must report information received relating to child abuse and neglect except when the information is received during a communication that is protected by the clergy and penitent privilege as recognized by state statute.

Senate amendments added provisions that: (1) change from eighteen to seventeen the minimum age in the offense of causing or influencing a minor to commit unlawful acts and other activities; (2) provide conditions under which an out-of-court statement made by a child victim to a third party is admissible in a general sessions court proceeding or a delinquency proceeding in a family court; and (3) enact the revisions to the investigation and record-keeping of child abuse and neglect allegations that the Senate has passed in S.1208, Stephanie's Law (see the summary below).

STATUS: H.5048 passed the House on May 1, 2002, and was sent to the Senate where it was amended and given second reading on May 23.

CHILD ABUSE AND NEGLECT REPORTS, STEPHANIE'S LAW (S.1208)

The Senate passed S.1208, Stephanie's Law, and sent the bill to the House where it has been reported out of the Judiciary Committee, favorable with amendment. This bill establishes more rigorous reporting and record keeping guidelines for child abuse and neglect cases in South Carolina. This bill provides that when the Department of Social Services receives a report of suspected child abuse or neglect, DSS must determine whether previous reports have been made regarding the same child or the same subject of the report. The bill further provides that if DSS does not conduct an investigation as a result of information received, DSS must make a record of the report and allow that information to be used by it and law enforcement for purposes of assessing risk and safety if additional contacts are made concerning the child, the family, or the subject of the report.

This bill also requires that DSS retain records of all reports and place each report in a specified category (suspected, indicated, or unfounded) based on the department

investigation. The bill provides that reports that are classified as unfounded must be retained by DSS for up to five years. Once these records are classified, the bill limits access to them and specifically removes them from Freedom of Information Act inquiry. The bill also ends the practice of purging certain records from the central registry, allowing Department access to all reports at all times.

The bill precludes the registry from containing any report that the Department classifies as unfounded.

In addition to revising some provisions relating to the reporting and record keeping guidelines for child abuse and neglect cases, the amendment proposed by the House Judiciary Committee also incorporates other provisions previously approved by the House: (1) the provisions of H.4989, relating to child abuse provisions in the Children's Code; (2) the provisions of H.3774 as amended by the House, under which common law marriage would not be considered valid after the current calendar year; (3) provisions for earlier sine die adjournment of the General Assembly; (4) the Student-Led Message Act, H.4683; (5) conditions under which records of a conviction as a youthful offender may be expunged.

STATUS: S.1208 passed the Senate on April 18, 2002, and was sent to the House where it has been reported out of the Judiciary Committee favorable with amendment.

DOMESTIC VIOLENCE PREVENTION ACT (H.3056)

The House approved H.3056, the Domestic Violence Prevention Act, and sent the bill to the Senate where it has been reported out of the Judiciary Committee, favorable with amendment. The legislation provides for various penalty enhancements and revisions for domestic violence offenses.

The legislation provides for a penalty for a second offense violation of Criminal Domestic Violence and Criminal Domestic Violence of a high and aggravated nature, if committed within the previous ten years. The second offense violation would be a misdemeanor and subject the offender to a penalty, upon conviction, of imprisonment for not more than 30 days and a fine of not more than five hundred dollars. The court may suspend all or part of the sentence if the offender completes a program designed to treat batterers.

The legislation revises the statutory list of aggravating circumstances which are used to determine whether to impose a sentence of either death or life imprisonment on the defendant by adding separate aggravating circumstances that can be used to impose a sentence for murder. These circumstances include a murder committed in violation of a protective order or a restraining order, and a murder committed against a household member when the defendant had a prior conviction for committing certain listed offenses against the household member victim.

The legislation provides that for a first offense of criminal domestic violence, that the offender may, after five years from the date of the conviction, apply to the court for an order expunging the records of the arrest and conviction. The offender must have had no other conviction during the five-year period following the conviction under this section and may only take advantage of this provision once, the offender must not have previously participated in the pretrial intervention program for first offense criminal domestic violence, and the offender must have satisfactorily completed a batterers treatment program.

The legislation provides for a penalty for a third offense violation of criminal domestic violence and criminal domestic violence of a high and aggravated nature, providing a mandatory minimum term of imprisonment for 90 days. The court may suspend all or part of the sentence, with the exception of the 90-day minimum, if the offender completes a program designed to treat batterers.

The legislation provides for a penalty for a first offense violation of an order of protection. The penalty is imprisonment for thirty days and a fine of not more than five hundred; however the court may suspend all or part of the sentence if the offender completes a counseling program. A person found guilty of this provision and criminal domestic violence of a high and aggravated nature must be sentenced under the latter.

An individual who violates the general criminal domestic violence offense is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs: (1) the person intentionally commits an assault and battery which involves the use of deadly weapon or results in serious bodily injury to the victim; or (2) the person intentionally commits an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death. A person who violates this section is guilty of a felony. The court may suspend part of the sentence if the offender completes a counseling program.

When a person reports a criminal domestic violence violation at a later time and law enforcement was not notified at the time the alleged violation occurred, law enforcement must complete an investigation of the allegations. A charge may be brought only by presenting the results of the investigation conducted by law enforcement and any other evidence for review by a judge who may issue an arrest warrant upon a showing of probable cause.

A person may not be considered for pre-trial intervention if he is charged with a criminal domestic violence offense if the offender has been previously convicted of a criminal domestic violence violation or a similar offense in another jurisdiction.

The Committee amended the definition of "household member" under criminal domestic violence and protection from domestic abuse provisions so as to eliminate from the definition persons related by consanguinity or affinity within the second degree.

The bill provides that following a first offense conviction as a youthful offender the defendant may apply to have his record expunged after 15 years.

The bill also includes the provisions of H.4989 which provides for procedures for South Carolina Court Administration to receive notice of a solicitor's intent to seek the death penalty and procedures for maintaining records and statistics regarding death penalty cases.

STATUS: H.3056 passed the House on May 2, 2002, and was sent to the Senate where it was reported out of the Judiciary Committee, favorable with amendment, on May 22.

CONSERVATION/ HISTORIC PRESERVATION

Conservation Bank Act (S.297)

The General Assembly passed S.297, the South Carolina Conservation Bank Act, and the Governor signed the bill into law on April 10. The legislation establishes the South Carolina Conservation Bank as an ongoing funding source governed by a twelve-member board and created to acquire interests in real property from willing sellers in order to protect wildlife habitats, forestlands, farmlands, open space, parks, historical sites, and healthy streams, rivers, bays, and estuaries. Areas are to be conserved for recreational purposes, scientific study, aesthetic appreciation, the protection of critical water resources, the maintenance of the State's position as an attractive location for visitors and new industry, and the preservation of the State's outstanding natural and historical sites for the benefit of future generations. The Conservation Bank is established to encourage cooperation and innovative partnerships among landowners, state agencies, local governments, and nonprofit organizations to ensure the orderly development of the State.

The bill provides for the Board's appointed and *ex officio* membership, terms of service, and meetings. The Governor is authorized to appoint three board members from the state at large. Three members are appointed by the President Pro Tempore of the Senate, one each from the first, second, and fifth congressional districts. Three members are appointed by the Speaker of the House of Representatives, one each from the third, fourth, and sixth congressional districts. The *ex officio* members are the board chairs of the Department of Natural Resources and the South Carolina Forestry Commission, and the director of the South Carolina Department of Parks, Recreation, and Tourism. Board members serve four-year terms under a staggered schedule. Members shall serve without compensation, but may receive the mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions. The board shall

elect a chairman and other officers as necessary from its membership. The bill establishes conditions for when board members must recuse themselves from board decisions. In order to operate the Bank, the bill requires the Board to hire an executive director and authorizes the Board to hire staff, to contract for certain services, and to enter into cooperative agreements with other state agencies.

The bill creates the South Carolina Conservation Bank Trust Fund, separate from all other funds, to receive and hold revenues of the Bank. The trust fund is authorized to receive funding from any sources that the General Assembly may provide by law; and from governmental grants and private gifts and bequests. Effective July 1, 2004, twenty-five cents of the one dollar thirty cent state deed-recording fee must be credited to the South Carolina Conservation Bank Trust Fund. The Department of Public Safety is authorized to issue "Conserve South Carolina" special motor vehicle license plates which may have an emblem, a seal, logo, or other symbol of the South Carolina Conservation Bank. The portion of the biennial fee remaining after production costs are met is to be deposited in the Trust Fund. However, in a fiscal year when the General Assembly in the annual general appropriations act provides less appropriations than what was provided for the previous year to at least one-half of the state agencies or departments or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments, no further transfer of deed recording fees or other appropriated funds, state or local, may be credited to the trust fund for the fiscal year or balance of the fiscal year. Under such circumstances, existing balances in the trust fund may be used as provided.

The Bank is established and authorized to: (1) award grants to eligible trust fund recipients for the purchase of interests in land, so long as the grants advance the purposes of the Bank and meet the specified criteria; (2) make loans to eligible trust fund recipients for the purchase of interests in land, at no interest or at an interest rate determined by the board, and under terms determined by the board, so long as the loans advance the purposes of the Bank and meet the specified criteria; (3) apply for and receive additional funding for the trust fund from federal, private, and other sources, to be used as provided; (4) receive charitable contributions and donations to the trust fund, to be used as provided; and (5) receive contributions to the trust fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation, whether such obligation arises out of law, equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided; (6) exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next. Funds within the trust fund shall be invested or deposited into interest-bearing instruments or accounts, with the interest accruing and credited to the fund.

An eligible trust fund recipient may apply for a grant or loan from the trust fund to acquire a specific interest in land identified in its application. An application must not be submitted to the board without the written consent of the owner of the interest in land identified in the application. Contiguous landowners and other

interested parties may submit in writing to the board their views in support of or in opposition to the application. The board must hold a public hearing on the application at which the eligible trust fund recipient, contiguous landowners, and other interested parties shall be heard. Interested parties include representatives of the municipality, county, and public or private utilities in the area wherein the property is located. The board shall conduct a public hearing on an application before awarding a grant or loan pursuant to the application.

Before applying for trust funds for the purchase of an interest in land, the eligible trust fund recipient receiving the funds must notify the owner of the land that is the subject of the trust fund grant or loan of the following in writing: (1) that interests in land purchased with trust funds result in a permanent conveyance of such interests in land from the landowner to the eligible trust fund recipient or its assigns; and (2) that it may be in the landowner's interest to retain independent legal counsel, appraisals, and other professional advice.

The board shall evaluate each proposal according to conservation criteria listed in the bill, financial criteria listed in the bill, and the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities and other forms of public access. The board shall award grants or loans on the basis of how well proposals meet these three criteria.

The bill specifies the information that must be supplied by applicant for a grant or loan. Under the bill, an applicant is required to demonstrate that it is able to complete the project, indicate the total number of acres and describe the lands it has preserved in the State.

The board only may authorize grants or loans to purchase interests in lands at fair market value. In no cases may funds from the trust fund be used to acquire interests in lands at a price that exceeds the fair market value of the interest being acquired. However, trust funds may be used to acquire interests in land at below fair market value, but only if the owner of the interest consents and in writing to sell at below fair market value.

The Board is required, upon awarding a grant or loan, to set forth specified findings including but not limited to findings regarding the application/applicant which are relevant to the award and how the application/applicant satisfies the provisions and intentions of the bill.

The bill provides that land interest acquired by an eligible trust fund recipient may not be extinguished, sold, transferred, assigned, alienated, or converted to a purpose other than that set forth in the grant or loan award without following the procedures set forth in the legislation.

Interests in land acquired with trust funds must be managed and maintained in order to perpetuate the conservation, natural, historical, open space, and recreational uses or values for which they were originally acquired. Uses which are adverse to the original purposes for which the interests in land were acquired with trust funds

are not permitted without securing a: (1) two-thirds vote of the board, following a finding of fact that the land no longer exhibits the characteristics that qualified it for acquisition with funds from the fund; and (2) majority vote of the State Budget and Control Board.

Funds from the trust fund may not be used to acquire interests in lands or other interests in real property through the exercise of any power of eminent domain or condemnation proceeding. This provision may not be repealed, amended, or otherwise modified except by an affirmative two-thirds vote of the total membership of both the House of Representatives and the Senate.

The provisions of this legislation must not be construed to eliminate or unreasonably restrict hunting, fishing, farming, forestry, timber management, or wildlife habitat management, as regulated by the laws of this State, upon lands for which interests in lands are obtained pursuant to this chapter. These and other traditional and compatible activities may be conducted, where appropriate, upon lands preserved with trust funds.

The bill requires the Bank submit an annual report containing specified data, to the Governor, Lieutenant Governor, and General Assembly. The Board must also perform a bi-annual review of the plight of land loss by small landowners and holders of heirs property. The results of this review must be submitted to the General Assembly.

The South Carolina Conservation Bank Act provisions are repealed effective July 1, 2013, unless reenacted or otherwise extended by the General Assembly. However, the South Carolina Conservation Bank established by this act may continue to operate as if it were not repealed until the South Carolina Conservation Bank Trust Fund is exhausted or July 1, 2016, whichever first occurs. Any balance in that trust fund on July 1, 2016, reverts to the general fund of the State.

STATUS: S.297 passed the General Assembly and was signed into law by the Governor on April 10, 2002 (Act 200).

HISTORIC REHABILITATION INCENTIVES ACT (H.3163)

The General Assembly passed H.3163, the South Carolina Historic Rehabilitation Incentives Act, and the legislation was signed into law by the Governor on May 1. The legislation provides state income tax credits for certain expenditures incurred in the rehabilitation of certified historic structures located in this State. The legislation provides a state income tax credit equal to ten percent of rehabilitation expenses incurred for a taxpayer who is eligible for the federal income tax credit allowed for the rehabilitation of historic structures for profit-making ventures. For taxpayers who do not qualify for the federal income tax credit and who are rehabilitating a certified historic residential structure, the legislation provides a state income tax credit equal to twenty-five percent of rehabilitation expenses incurred.

STATUS: The General Assembly passed H.3163 and the bill was signed into law by the Governor on May 1, 2002 (Act 229).

THE COURTS

GUARDIANS AD LITEM (S.322)

On April 24, 2002, a Conference Committee was appointed to address differences in the House and Senate versions of S.322. The bill provides requirements and restrictions pertaining to a Guardian ad Litem appointed in a private action before the family court in which custody or visitation of a minor child is an issue. A brief description of the key issues and major differences of the Guardian ad Litem legislation in the House and Senate versions are discussed below.

Appointment of GALs

The House Version and Senate Versions are very similar for the appointment process for GALs. The House Version requires the court to appoint only when any of the two occur (1) when it determines that without a GAL the court would not be fully informed about the facts of the case *and* there is a substantial dispute or (2) when both parties consent.

The Senate version requires the court to appoint when any of three occur (1) it determines that without a GAL the court would not be fully informed about the facts of the case; *or* (2) there is a substantial dispute or (3) when both parties consent.

Training and Qualifications of GALs

There are some differences in the areas of training and qualifications of GALs in the House and Senate Version. The House Version requires that only nonattorneys receive initial and annual training in the areas of custody, visitation, and family court procedure to become and remain a GAL.

The Senate Version requires that both attorneys and nonattorneys receive initial and annual training in the areas of custody, visitation, and family court procedure. In the Senate version, an attorney is required to receive six hours of family law continuing legal education in the areas of custody and visitation. Additionally, the Senate Version requires that a GAL possess a high school diploma or its equivalent.

Both versions provide for the same numbers of hours for nonattorney training – nine hours of family law continuing legal education in the areas of custody and visitation, three hours of substantive law and procedure in family court, and observing 3

contested custody merits hearings. Both versions require that a GAL be at least 25 years of age.

Appointment of Attorney for GAL

Both the House and Senate Versions provide that the family court may appoint an attorney for the guardian ad litem upon its own motion or upon motion of a party or the guardian ad litem.

Responsibilities and Duties of GAL

Both the House and Senate Versions use the guidelines set forth by the South Carolina Supreme Court in *Patel v. Patel* to set out the responsibilities and duties of the GAL. However, there are some differences in the two versions, the most significant of which relates to the duty of the GAL to make recommendations to the court.

The House Version allows the GAL to make recommendations regarding the child's best interest including a final recommendation as to the custody of the child. Essentially, the House Version allows the GAL to be a complete advocate for the child.

The Senate Version allows the GAL to make any recommendations regarding the child's best interest *except for the final recommendation of custody unless requested by the court for specific reasons set forth on the record.* The Senate Version also allows the GAL to be an advocate for the child except to make the final determination of custody, unless requested by the court for specific reasons.

The House Version allows the GAL to submit the final report 15 days prior to the merits hearing. The Senate Version allows the GAL to submit the final report 30 days prior to the merits hearing but in no event later than 10 days.

GAL Fees

There are some significant differences in House and Senate Versions regarding fees that may be charged by GALs.

The House Version requires the court to set the rate of compensation at the time of appointment of the GAL. It also requires the GAL to submit *periodic* itemized billings to the parties and their attorneys.

The Senate Version requires the court to set the rate of compensation at the time of appointment of the GAL, *including an initial authorization of a fee based on the facts of the case.* It provides that the GAL must not charge a fee exceeding the initial authorization at the time of appointment. The Senate Version provides that if the GAL determines it is necessary to exceed the initial authorized fee, the GAL must provide notice to the parties and obtain the judge's written authorization to

increase the fee. The Senate Version requires the GAL to submit *monthly* itemized billings to the parties and their attorneys.

Both the House and Senate Versions require the court to consider the ability of the parties to pay fees and costs at the time of appointment.

Disclosure

There is one significant difference between House and Senate Versions regarding disclosure of relationships of the GAL to litigants and attorneys.

The House Version requires the GAL to provide written notice, at the time of appointment, to each party of the nature, duration, and extent of any relationship the GAL or any member of the GAL's immediate family residing in the GAL's household has *(1) with any party or, (2) with any attorney only if the GAL or his immediate family has any interest adverse to an attorney* which might cause the impartiality of the GAL to be challenged.

The Senate Version requires the GAL to provide written disclosure to each party of the nature, duration, and extent of any relationship the GAL or any member of the GAL's immediate family residing in the GAL's household has with *all parties and their attorneys* in the case. The Senate Version also requires a GAL to provide an affidavit to the court, before appointment, to include a statement affirming that the GAL does not have a relationship with *any party or any party's attorney* and if the GAL does have a relationship with any party or any party's attorney, the GAL must disclose the nature, duration, and extent of the relationship.

STATUS: On April 24, 2002, a Conference Committee was appointed to address House and Senate differences on S.322.

LEGAL NAME CHANGES (H.3906)

This bill sets out new procedures for obtaining a legal name change in the family court. The purpose of this bill is to ensure that the court is aware of the criminal history of a petitioner before a name change is granted; and that if a petition for a name change is granted and the petitioner does have a criminal background, that the proper agencies are notified of the name change. This bill does exempt from the legal name change requirements persons who are seeking to change their name as a result of the person's marriage or divorce, or when a parent is seeking a name change for a minor child.

This bill includes the following new requirements for petitioners and the clerks of court for obtaining a legal name change: (1) requires that a petitioner include the results of a fingerprint check in addition to a criminal background check; (2) requires the petitioner to provide an affidavit to the court to affirm whether he/she is under a court order to pay child support or alimony; (3) adds that the petitioner must provide with his/her petition for a name change a screening statement from

SLED indicating whether he/she was on the sex offender registry. If the petitioner is on the registry and the petition is granted, the clerk of court is required to notify SLED so that SLED may update the registry to properly reflect the name change; (4) adds that the petitioner must provide a screening statement from the Department of Social Services indicating whether he/she is on DSS's Central Registry of Child Abuse and Neglect. If the petitioner is on the registry and the petition is granted, the clerk of court is required to notify DSS so that DSS may update the registry to properly reflect the name change; (5) requires the clerk of court to notify the Department of Corrections of prisoners who are granted a name change, so that DOC can accurately reflect the change in the prisoner's criminal record; and (6) requires that all costs associated with the legal name change requirements be borne by the petitioner.

The legislation gives the family court discretion to determine when a hearing on a legal name change petition is necessary.

STATUS: H.3906 passed the House on April 18, 2002, and was sent to the Senate where it was amended and given second reading on May 23.

CRIME AND PUNISHMENT

CHILD ABUSE AND NEGLECT PROVISIONS

(See CHILD ABUSE/ DOMESTIC VIOLENCE section of this document)

DEATH PENALTY STATISTICS (H.4989)

The House approved and sent to the Senate H.4989, a bill pertaining to information on death penalty cases maintained by the Office of Court Administration. This bill provides that when a solicitor gives required notice to a defense attorney of the intent to seek the death penalty, the solicitor also must provide a copy of his notice of intent to seek the death penalty to the court administrator of this State and to the Commission on Indigent Defense. The solicitor's notice to the court administrator also must include the date the notice is made, the alleged crime, the date the alleged crime occurred, the county in which the alleged crime occurred, demographic information about the victim, and the person or persons charged with the crime, including their age, race, sex, and ethnic background. The court administrator must use data provided by the solicitors to maintain records and statistics regarding the basic information. The Office of Court Administration must compile, collate, index, and maintain a file of the required information and make the file available to the general public during the normal business hours of the offices of Court Administration. The legislation provides a procedure for challenging and correcting information in the file. The lack of notice given to the court administrator will never serve as a defense for the defendant of a capital case.

STATUS: H.4989 passed the House on April 26, 2002, and was sent to the Senate where it has received a favorable report from the Judiciary Committee. The provisions of H.4989 were also included in H.3056, the Domestic Violence Prevention Act, which passed the House on May 2, 2002, was sent to the Senate, and referred to the Judiciary Committee.

DOMESTIC VIOLENCE

(See CHILD ABUSE/ DOMESTIC VIOLENCE section of this document)

TRUTH IN SENTENCING (H.3141)

In 1996, Truth in Sentencing for those convicted of offenses with maximum penalties of 20 years or more went into effect. This legislation eliminated parole for these offenders and required them to serve at least 85% of their sentences.

Most of these offenses are classified as violent crimes. However, some crimes classified as violent do not fall under Truth in Sentencing. They include Second Degree Burglary; First Offense Trafficking in Marijuana, 10-100 lbs; First Offense Trafficking in Cocaine, 10-28 grams; First Offense Trafficking in Methaqualone, 15-150 grams; First Offense Trafficking in LSD, 100-499 dose units; First Offense Trafficking in Fluintrazepam (Date Rape Drug), 1-100 grams; and First Offense Trafficking in Ice, Crank, or Crack Cocaine. Other serious offenses that do not fall under Truth in Sentencing include Lewd Act upon a Minor, which is a Class D, 15-year Felony and Embezzlement of Public Funds over $5,000, which is a Class E, 10-year Felony.

The House version of this bill extends Truth in Sentencing provisions to all crimes in South Carolina. All offenders would be required to serve at least 85% of their sentences and would serve 100% if they do not earn work, education, or good time credits. Parole would be abolished for all offenders who commit crimes after the effective date of the act. The Senate version of this bill would apply the provisions of Truth in Sentencing to one more class of felonies to include Class D felonies and those offenses exempt from classification with maximum penalties of fifteen years or more. The Senate version would also apply the provisions of Truth in Sentencing to the offenses of Assault and Battery of a High and Aggravated Nature, Criminal Domestic Violence of a High and Aggravated Nature, and Criminal Sexual Conduct in the third degree.

Both versions of this bill amend current law to correct an unusual provision relating to the operation of the Community Supervision Program. Under current law, when an offender who is subject to Truth in Sentencing is sentenced and eventually released from prison, the offender is released under the Community Supervision Program. If the offender violates one of the program's conditions and is sent back to prison, he can be sent to prison on the violation for up to one year. The current

law then provides that the offender will be re-released back into the Community Supervision Program and if he violates again he can be returned back to prison for up to another year. The offender can cycle through this process for up to twice his original sentence. This bill was modified to provide that the court may *not* impose a period of incarceration for a violation of the Community Supervision Program that exceeds the length of time remaining on the original sentence.

The Senate version of the bill added a provision regarding racial profiling which would expire July 1, 2006. Additionally, the Senate version of the bill would equalize the penalties for crack cocaine and powder cocaine by lowering the penalties for crack cocaine to mirror the penalties of powder cocaine.

STATUS: A conference committee has been appointed (February 27, 2002) to address the differences of the House and Senate on H.3141.

EDUCATION

CHARTER SCHOOLS (S.12)

The Senate approved **S.12**, a bill which amends current law regarding the organization, operation, and governance of charter schools in South Carolina. Highlights of the bill as passed by the Senate are as follows:

- **Findings/Intent**

  The legislation includes a statement that "*because the state no longer sanctions a system of segregated schools, it is the intent of the General Assembly that creation of this chapter encourages cultural diversity, educational improvement, and academic excellence. Further, it is not the intent of the General Assembly to create a segregated school system but to continue to promote educational improvement and excellence in South Carolina.*"

- **Fingerprinting/Noncertified Teachers**

  The legislation amends the definition of "noncertified teacher" for purposes of charter schools. "Noncertified teacher" is currently defined as an individual considered appropriately qualified for the subject matter taught, and who has been approved by the charter committee of the school. The legislation strikes the requirement for approval by the school's charter committee, and adds a requirement for completion of at least one year of study at an accredited college or university and a requirement for state fingerprint review.

- **Teacher Qualifications for Teaching Core Subjects**

  The legislation provides that in either a new or converted charter school, a teacher teaching in the core academic areas of English/language arts, math, science, or social studies must be certified in those areas, or possess a baccalaureate or graduate degree in the subject he or she is hired to teach.

  The legislation also provides that a charter school may hire in its discretion administrative staff to oversee daily operation of the school, and at least one of the administrative staff must be certified in the field of school administration.

- **Racial Composition**

  The legislation includes a requirement that the racial composition of the charter school enrollment reflect that of the school district or that of the targeted student population which the charter school proposes to serve, as differing by no more than twenty percent.

- **Percent Preference for Charter Committee Children**

  The legislation provides that children of the charter committee may be given enrollment priority so long as their enrollment does not constitute more than twenty percent of the enrollment of the charter school.

- **Interscholastic Participation**

  The legislation adds a provision to the law that the charter contract may include participation in agreed upon interscholastic activities at a designated school within the sponsor district. The legislation further provides that students participating under this agreement shall be considered eligible to participate in league events if all other eligibility requirements are met.

- **Enrollment Assurance**

  The legislation revises the current requirement that the charter school application must include a description of how the charter school plans to ensure that the enrollment of the school is similar to the racial composition of the school district, by providing that the charter school application must include a description of how the school plans to ensure that the enrollment is similar to the racial composition of the school district or the targeted student population the charter school proposes to serve and provide assurance that the school does not conflict with any school district desegregation plan or order in effect.

- **Consideration of Applicant's or School's Efforts to Obtain**

Racial Composition Percentage

The legislation provides that in the event that the racial composition of an applicant's or charter school's enrollment differs from the enrollment of the local school district or the targeted student population by more than twenty percent, despite its best efforts, the local school district's board shall consider the applicant's or the charter school's recruitment efforts and racial composition of the applicant pool in determining whether the applicant or charter school is operating in a non-discriminatory manner. A finding by the local school district board that the applicant or charter school is operating in a racially discriminatory manner may justify the denial of a charter school application or the revocation of a charter school. A finding by the local school district board that the applicant is not operating in a racially discriminating manner shall justify approval of the charter without regard to the percentage requirement if the application is acceptable in all other aspects.

- **Conditional Authorization of Charter**

Current law provides that a local school board "may" conditionally authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant **indicates** such authority is necessary for it to meet the relevant statutory requirements. This legislation changes this language so as to provide that a local school board "shall" conditionally authorize a charter school if the application is acceptable in all other aspects but the applicant has not secured its space, equipment, facilities, or personnel and the applicant **verifies that** such authority is necessary for it to acquire the space, equipment, facilities, or personnel needed to meet the relevant statutory requirements.

- **Duration of Charter Contract**

Current law provides that a charter may be approved or renewed for a period not to exceed three school years. This legislation provides that a charter may be approved or renewed for a period of **five** school years, and provided that the charter may be revoked or not renewed pursuant to specified statutory provisions.

- **Out of District Transfers to Charter Schools**

The legislation provides that a child who resides in a school district other than the one where a charter school is located may attend a charter school outside his district of residence; however, the receiving charter

school shall have authority to grant or deny permission for the student to attend according to the terms of the charter after in-district children have been given priority in enrollment. The legislation also provides that the out-of-district enrollment shall not exceed twenty percent of the total enrollment of the charter school without the approval of the sponsoring district board of trustees. The legislation also provides that the district sending children to the charter school must be notified immediately of the transferring students, and out-of-district students must be considered based on the order in which their applications are received. The legislation further provides that if the twenty percent out-of-district enrollment is from one school district, then the sending district must concur with any additional students transferring from that district to attend the charter school. The charter school to which the child is transferring shall be eligible for state and federal funding.

- **Surplus Buildings**

  The legislation includes a provision that if a school district declares a building surplus and chooses to sell or lease the building, a charter school's board of directors or a charter committee operating or applying within the district must be given first refusal to purchase or lease the building under no more than the same terms and conditions it would be offered to the public.

STATUS: S.12 was approved by the Senate (as summarized above) and was amended and reported favorably from the House Education and Public Works Committee. The bill is currently on the House calendar pending second reading, with requests for debate by twelve members of the House.

SCHOOL START DATE

(See H.4878 and H.4879 under the "Appropriations" section of this document.)

S.C. RESEARCH CENTERS OF ECONOMIC EXCELLENCE (H.4879)

(See H.4879 under "Appropriations" Section of this document)

HOMELAND SECURITY

OMNIBUS COUNTER-TERRORISM AND HOMELAND DEFENSE ACT/ SOUTH CAROLINA HOMELAND SECURITY ACT (H.4416)

The House and Senate have approved different versions of H.4416, titled the South Carolina Omnibus Counter-Terrorism and Homeland Defense Act in the House version and the South Carolina Homeland Security Act in the Senate version.

The legislation affords state law enforcement authorities with new means of investigating potential terrorist threats.

Interception of Wire, Oral and Electronic Communications

The bill authorizes a judge of competent jurisdiction to order the interception of wire, oral or electronic communications by the State Law Enforcement Division (SLED) upon application by the Attorney General or Solicitors if such communication will provide evidence of the commission of specified violent crimes, of any offense related to terrorism or any offense related to bombs, destructive devices and weapons of mass destruction as provided by the bill.

Other investigative or law enforcement officers of governmental law enforcement agencies, government personnel and individuals operating under a government contract may assist SLED in conducting interceptions under the direct supervision of SLED.

All officers who are authorized to conduct interceptions must first undergo training provided by SLED in conducting such surveillance with emphasis on techniques for minimizing the interception of communications that fall outside of the scope of these provisions.

The legislation establishes conditions for such court orders for intercepting communications, time limits for investigations conducted under such an order, the manner in which extensions may be obtained, and procedures for operating under time-sensitive emergency conditions.

The legislation establishes new offenses to punish those who commit, attempt to commit, or support acts of terrorism.

The Senate version contains revised wiretapping provisions.

Terrorism Identification and Prevention Provisions

The bill provides that it is unlawful to provide material support or resources knowing that they will be used in preparation for, or in carrying out a violation of an anti-terrorist law or in support of a foreign terrorist organization. Anti-terrorist law is

defined to include multiple offenses currently established under federal law including, use, possession or development of weapons of mass destruction in furtherance of domestic and international terrorism; destruction of aircraft or aircraft facilities; hostage taking. A person who violates this provision is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars nor more than one hundred thousand dollars, and/or imprisoned not more than ten years. All property or resources pertaining to a violation is considered contraband and is subject to forfeiture. Conditions similar to the procedures used for the confiscation of property in drug trafficking offenses are established for the seizure of such property and resources and for their subsequent use or sale.

The bill provides that it is unlawful for a terrorist organization or any person, in furtherance of terrorism, to damage, destroy or interfere with public infrastructure by using weapons of mass destruction, arson or interfering with, disabling or incapacitating a person or operator of a component of public infrastructure with the intent to endanger the public's safety. A person who violates this provision is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years or for life without parole.

The bill provides that it is unlawful to interfere with private or public mass transportation with the intent to cause bodily injury. A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

These provisions are not in the Senate version of the bill.

Death Penalty for Violation of Anti-terrorist Law

This legislation creates an aggravating circumstance for when the death penalty may be ordered to include a violation of specified laws pertaining to terrorist activities and weapons of mass destruction.

These provisions are not in the Senate version of the bill.

Revisions to Weapons of Mass Destruction Statutes

The bill revises current provisions pertaining to weapons of mass destruction, so as to make it unlawful for a person to cause sickness and disease by using a weapon of mass destruction or destructive device.

The bill provides that it is unlawful to threaten or attempt to threaten to cause damage, injury, sickness, disease or death or to cause damage or destruction to a building or other property by means of a destructive device.

The bill provides that it is unlawful for a person to knowingly harm or destroy a plot, land, a stream, pond, lake or body of water, a crop, plant or livestock, wildlife or fish by means of the direct or indirect use of a biological, chemical or nuclear

weapon of mass destruction with the intent to cause economic or physical harm to a person or damage to property.

The bill provides that it is unlawful for a person to commit an offense using a biological attack, destructive device, weapon of mass destruction, biological or bacteriological weapon if committed incident to or to facilitate an act of terrorism or international terrorism.

The bill specifies those individuals who are exempt from certain restrictions including military and law enforcement officers engaged in lawful activity and persons engaged in lawful research, accepted agricultural, pest and weed control practices.

The bill requires notification by law enforcement of encounters of weapons of mass destruction to public health officials.

The bill provides that restitution be ordered for certain violations. *This provision is not in the Senate version of the bill.*

Freedom of Information Act Provisions

The legislation clarifies that a public agency may prohibit disclosure of law enforcement records that are also not subject to disclosure under federal law.

The legislation authorizes a public agency to prohibit disclosure of information relating to security plans and devices of public bodies except for amounts expended for the adoption, implementation, or installation of such security plans and devices.

The legislation authorizes DHEC to regulate the disclosure of certain chemical and industrial storage information subject to federal law and federal regulations to prevent the release of certain information that would increase the risk of acts of terrorism. The director of DHEC must notify the Attorney General and identify such information and promulgate regulations to regulate access to such information.

The legislation contains numerous provisions related to a declared state of emergency.

Price Gouging and Misleading Solicitations Prohibitions

The legislation establishes provisions prohibiting price gouging and willfully misleading solicitation of money for charitable purposes during a state of emergency declared by the Governor or a state of disaster declared by the President.

SLED Criminal Background Checks of Emergency Workers

The legislation authorizes SLED, during a declared state of emergency by the Governor, to conduct state and FBI criminal background checks of persons engaged in volunteer, paid, public or commercial employment related to the emergency.

These provisions are not in the Senate version of the bill.

Protection of Electronic Data

To protect the state's critical information technology infrastructure and associated data systems in the event of a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue in such an event, the Office of the State Chief Information Officer (CIO) shall develop a Critical Information Technology Infrastructure Protection Plan devising policies and procedures to allow for alternative and immediate on-line access to critical data and information systems.

Leaves of Absence for State Workers Trained in Disaster Response

The legislation provides officers or employees of this State who are trained for disaster response by the American Red Cross or whose training is utilized by the American Red Cross a leave of absence not to exceed fifteen days in any one year to engage in training or any other duties requested by the Governor, the American Red Cross, or other state or federal agency without being penalized, but only upon obtaining their supervisor's approval.

Tax Credits for Emergency Workers

The legislation provides that provides that a taxpayer employed in a member of some emergency entity (fire, police, etc.) that is assigned for more than five days by a superior officer to assist in the wake of a terrorist attack may claim a $25 a day credit against the state income tax up to $1,000 in a taxable year.

These provisions are not in the Senate version of the bill.

Active Duty State Income Tax Exclusion

The legislation provides that all compensation and benefits earned while mobilized for active duty otherwise subject to the state income tax are excluded from SC gross income of reservists and members of the National Guard if they are called to active duty for "Operation Enduring Freedom" or "Operation Noble Eagle," or both and perform such duty.

These provisions are not in the Senate version of the bill.

Free Admission to State Parks for Emergency Workers on September Eleventh

The legislation allows any law enforcement official, firefighter and emergency medical technician to enter a state park without charge on September 11 of each year upon showing proof of employment with a badge, certification card or other valid credentials.

These provisions are not in the Senate version of the bill.

South Carolina 9/11 Scholarship Program

The legislation creates the South Carolina 9/11 Scholarship Program and will provide a scholarship to any South Carolina resident whose parent or legal guardian who was also a South Carolina resident and died as a result of the terrorist attacks on September 11, 2001, in New York City, the Pentagon and Pennsylvania. This scholarship includes the cost of tuition at any state public institution of higher learning for up to 5 years of full-time undergraduate study.

These provisions are not in the Senate version of the bill.

State Day of Remembrance

The legislation designates September 11 of each year as a State Day of Remembrance.

These provisions are not in the Senate version of the bill.

Moment of Silence

The legislation revises the current mandatory moment of silence requirement by requiring all school districts to establish in every school under its jurisdiction the daily observance of one minute of silence for voluntary prayer, meditation, or other silent activity. During the one-minute period of silence, the teacher responsible for each classroom shall ensure that all pupils remain seated and silent and make no distracting display to the end that each pupil, in the exercise of his individual choice, may pray, meditate, or engage in any other silent activity which does not interfere with, distract, or impede other pupils in the like exercise of individual choice.

These provisions are not in the Senate version of the bill.

Display of National Mottos and Other Meaningful Documents

The principal in each public elementary and secondary school in this State shall display on an appropriately framed background with minimum dimensions of eleven inches by fourteen inches, the following national mottos of the United States of America in a prominent place inside the school under his supervision: 'In God We Trust' and 'E Pluribus Unum'. Each public school teacher shall display in his or her classroom the motto 'In God We Trust'. The mottos 'In God We Trust' and 'E Pluribus Unum' shall also be displayed in a prominent place inside the admissions office of each public institution of higher learning.

Under the bill, an object containing the words of the Ten Commandments may be displayed on State property along with other documents of historical significance that have formed and influenced the United States legal or governmental system.

The display of an object containing the words of the Ten Commandments must be in the same manner and appearance generally as other documents and objects displayed and must not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects.

These provisions are not in the Senate version of the bill.

The Senate version also differs notably from the House version insofar as it:

- The General Assembly authorizes (subject to appropriations) the State Budget and Control Board to plan, develop, and implement a statewide South Carolina 211 Network, which must serve as the single point of coordination for information and referral for health and human services.

- Gives Special Purpose Districts the authority to establish public safety departments to protect water/gas, etc. facilities; however, they may not issue traffic tickets.

- Adds computer crimes and terrorism to Grand Jury Jurisdiction.

- With regard to declared States of Emergencies, restitution is required for looting—penalties are not increased.

- Computer Crimes provisions are updated and enhanced.

- Establishes, subject to funding by the General Assembly, a statewide Urban Search and Recovery Team for response to emergency situations.

- Adds "public health emergency" to existing statute on emergencies declared by the Governor.

- Establishes a Freedom of Information Act exemption for information relating to plans, etc. for the prevention of terrorism. The amounts expended would not be exempt from disclosure. An FOIA exemption is provided for information relating to structural bridge plans.

- Establishes the Emergency Health Powers Act which provides special powers for the Department of Health and Environmental Control during a State of Emergency such as voluntary vaccinations and quarantines.

- Reporting of unusual illnesses by coroners, health care providers, and pharmacists.

- Veterinarians must report to the State Veterinarian and the State Vet must report to DHEC any cases of suspected chemical terrorism or bioterrorism affecting animals. Similar reporting requirements are included for farmers to Clemson; Clemson would then report to DHEC.

- Creates the First Responders Advisory Committee. The authority and responsibilities of the committee are to research, study, analyze, determine, and report to the General Assembly by January 1, 2003, and thereafter to the President Pro Tempore of the Senate and the Speaker of the House concerning the needs of the first responders, including personnel involved with fire, law enforcement, emergency medical, emergency planning and coordinating, and 911 and other emergency communications. The issues to be studied with regard to first responders include, but are not limited to: (1) performance of their duties, rendering of their services to the public in general, and to the individuals involved in an emergency, including the other first responders involved; (2) preparing for the performance of those duties, including equipping, training, planning, and coordinating; (3) funding their operations; (4) preserving and enhancing their personal fitness, well-being, morale, and welfare; (5) the appropriate role the State should play in continuing to assess and address the identified needs, including whether, and in what form, a new or existing state agency could and should be authorized and funded to assist in that role; and (6) the consideration of legislation to address the identified needs and providing the General Assembly with draft legislation with regard to these issues.

- Repeals a provision that allows a person to refuse to have his or her picture on his or her driver's license.

- Includes volunteer state constables under State Workers' Compensation provision.

- Provides that a private investigator applicant must submit with the application one complete set of the applicant's fingerprints on forms specified or furnished by SLED. Fingerprint cards submitted to SLED must be used to facilitate a national criminal records check,

STATUS: The House passed H.4416 on February 28, 2002. On May 22, the Senate returned the bill to the House with amendments.

RESTRICTED FERTILIZERS (H.4944)

The House approved and sent to the Senate H.4944. As approved by the House, this bill codifies a definition for "restricted fertilizer," which is a commercial fertilizer having a potential explosive capacity that is determined to present an unreasonable threat to public safety. The stated intent of the bill is to provide and allow for monitoring of the distribution of restricted fertilizers in this State and to encourage distributors to sell restricted fertilizers only to persons known to use such fertilizer for farm or garden purposes. The bill provides for fertilizer distribution permits, distinguishing between general and restricted fertilizer permits. A general permit authorizes the permit holder to engage in the distribution of commercial fertilizers except those determined to be restricted fertilizers. A restricted fertilizer permit

authorizes the permit holder to engage in the distribution of all commercial fertilizers, including those that are designated as restricted fertilizers. The bill provides that for homeland security purposes, identifying information relating to the holder of a general or restricted fertilizer permit is exempt from disclosure under the Freedom of Information Act. The bill provides that violation of these provisions is a misdemeanor and the bill provides penalties for conviction.

The Senate amended the bill by adding a section providing that the provisions of the bill do not affect or defeat the right of a person to recover damages for any injuries sustained by him because of pollution of, or change in condition of, the waters of a stream or because of an overflow on his lands.

STATUS: H.4944 was approved by the House as summarized above. The bill was then amended and approved by the Senate (as reported above) and sent back to the House.

INSURANCE

HEALTH INSURANCE MANDATES (H.4583)

The House approved and sent to the Senate H.4583, a bill pertaining to state and federal health insurance mandates. The legislation creates the Task Force to Review State and Federal Health Insurance Mandates in South Carolina (composed of ten members under the House version and eleven members under the Senate version). The legislation provides for the membership, authority, and staff support of the task force. The task force is charged with reviewing: (1) each and every State and Federally mandated health benefit placed upon health insurance issuers in South Carolina since 1990; (2) the impact of each such mandated health benefit on the premiums for health insurance coverage in South Carolina. The task force shall make a final report with recommendations to the General Assembly no later than January 1, 2005, at which time the task force is dissolved. Until the task force is so dissolved, no mandated health benefit may be imposed on a health insurance issuer doing business in this State beyond those required as of January 1, 2002.

The Senate amended the bill to provide that until such time as the task force makes its final report, mandated health benefits beyond those required as of January 1, 2002 may be imposed on a health insurer doing business in this State only after review by the task force. Under no circumstances, however, is a mandate to be imposed prior to the first day of the second year after the effective date of the Act. Nothing in this provision shall be construed to prohibit any health insurance issuer from voluntarily expanding coverage or to prohibit any individual or employer from electing to expand coverage on any health maintenance organization contract or individual or group health insurance policy or contract covering the individual, the

employer, or employees of the employer as applicable. Nothing in this provision shall be construed to prohibit amendments to comport with federal law.

STATUS: H.4583 passed the House on March 21, 2002, and was sent to the Senate where it has been amended and returned to the House on May 22.

MOTORIST INSURANCE DATABASE PROGRAM ACT (H.5105)

H.5105 creates the Motorist Insurance Database Program for the purpose of establishing a database to use when verifying compliance with the State's requirements for automobile insurance or other motor vehicle financial security. The legislation provides that the Department of Public Safety shall convene a working group with a membership as specified in the bill for the purpose of facilitating the implementation of the program, assisting in development of regulations, and coordinating a testing phase, and necessary changes identified in this testing phase, as prescribed by the working group. The Motor Vehicles Division in the Department of Public Safety shall develop, in a manner prescribed by the department, a system to allow the transmission of data from insurance companies to the division. The department, with input from the Department of Insurance, shall promulgate regulations for administering and enforcing this provision. The regulations shall specify the requirements that are necessary and appropriate for commercial lines of insurance which shall be developed with input by the Department of Insurance. The division, for a fee prescribed and promulgated by regulation, shall make available to insurers by subscription a monthly electronic list of newly-licensed drivers. This list must not be used for marketing, solicitation, or another purpose not specifically enumerated. It may only be used to provide an additional method to reduce the uninsured motorist population. This monthly list of newly-licensed drivers must show the: name and gender of the driver, address, date of birth, South Carolina driver's license number, and, if available, insurance information provided in the liability certification portion of the application for a driver's license. This information may be used for: (1) determining if a newly-licensed driver is insured; (2) assigning a newly-licensed driver to the proper automobile insurance policy for rating purposes; and (3) ordering a motor vehicle report on a newly-licensed driver.

If the database indicates that a motor vehicle is not insured or if the division receives notification as prescribed by regulation that a vehicle may not be insured, the division shall notify the owner of the motor vehicle that he has forty-five days to provide the division with one of the following, or the owner's license plates will be subject to suspension: (1) proof of complying coverage or of self-insurance; or (2) proof of exemption from the financial security requirements. The bill authorizes disclosure, for a fee, of an individual's reported database information upon request by specified individuals and agencies, only. Funds collected from fees shall be placed by the Comptroller General into a special restricted account to be used by the department to defray expenses of the division.

STATUS: On May 23, 2002, the House concurred in Senate amendments to H.5105 and enrolled the bill for ratification.

LOTTERY/GAMBLING

GAMBLING CRUISE PROHIBITION ACT (H.4387)

The House approved and sent to the Senate H.4387, the Gambling Cruise Prohibition Act. The legislation prohibits gambling activities on so-called "cruises to nowhere." The legislation provides that it is unlawful for a person to use any gambling device or engage in gambling aboard a vessel within the jurisdiction of this State. The legislation provides that it is unlawful for a person to use any gambling device or engage in gambling aboard a vessel that is on a voyage if: (a) the voyage begins and ends in this State; and (b) during the voyage the vessel does not make an intervening stop. The legislation provides that it is unlawful for a person to own, keep, operate, manage, or maintain any gambling device on a vessel within the jurisdiction of this State unless: (a) the vessel is engaged in a voyage that begins and ends in this State and makes an intervening stop; and (b) any gambling that occurs aboard the vessel occurs only outside the jurisdictional waters of this State. The legislation also provides that is unlawful for a person to for a person to own, keep, operate, manage, or maintain a vessel that transports persons to another vessel for the purpose of engaging in a "cruise to nowhere" style gambling cruise. Under the bill, an 'intervening stop' occurs when a vessel departs the jurisdictional waters of this State and sails into United States or international waters, and between the time the vessel departs the jurisdictional waters of this State and the time it returns to the jurisdictional waters of this State, the vessel docks at a port of call in another state or possession of the United States or foreign country and remains in that port for a period of time sufficient to allow passengers the opportunity to disembark the vessel for sightseeing, shopping, or other tourism-related activities at that port. A person who engages in gambling that is unlawful under this act must be assessed a civil penalty of not more than one hundred dollars for each violation, with an aggregate total not to exceed one thousand dollars for a twenty-four hour period. An individual who violates provisions pertaining to the operation or facilitation of a "cruise to nowhere" must be assessed a civil penalty of not more than one thousand dollars for each violation, with an aggregate total not to exceed ten thousand dollars for a twenty-four period. The legislation provides that county and municipal governing bodies may adopt ordinances to exempt their local areas from prohibitions imposed under this legislation.

STATUS: The House passed H.4387 on April 19, 2002, and sent the bill to the Senate where it was referred to the Judiciary Committee.

GAMBLING OFFENSE REVISIONS (H.4476)

The House approved and sent to the Senate H.4476, a bill revising the State's gambling offenses so as to modernize the language and make the provisions more comprehensive. The bill provides that it is unlawful for a person in this State or at

any location within the jurisdiction of this State to gamble, wager, bet, stake, or risk money, property, or anything of value upon the outcome of a contest, game of chance, sports event, or any other current or future contingent event not under the person's control or influence, upon an agreement or understanding that he or another person will receive something of value in the event of a certain outcome. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The bill provides that it is unlawful for a person in this State or at any location within the jurisdiction of this State knowingly to own, keep, operate, manage, or maintain a device or location of any kind that is used for gambling. The legislation provides an exemption for cruises where any gambling that occurs aboard the vessel occurs only outside the jurisdictional waters of this State and the vessel makes an intervening stop. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than one year. The legislation does not apply to State Lottery activities.

STATUS: H.4476 passed the House on February 28, 2002, and was sent to the Senate where it was referred to the Judiciary Committee.

APPROPRIATION OF EDUCATION LOTTERY REVENUE (H.4879)

(See H.4879 under "Appropriations" section of this document.)

MOTOR VEHICLES

DRIVER'S LICENSE AND CHILD TRANSPORTATION REVISIONS (H.3933)

The General Assembly approved H.3933, a bill revising beginner's permits, provisional licenses, special restricted driver's licenses, and driver's training and restricting the transportation of children in the open bed or open cargo area of a pickup truck or trailer.

The bill provides revisions for the beginner's permit that may be issued to individuals at least fifteen years of age. The legislation provides that a beginner's permit is valid in the operation of vehicles between six a.m. and midnight, rather than "during the daylight hours," as is currently provided. A permittee may not drive between midnight and six o'clock a.m. unless accompanied by the permittee's licensed parent or guardian. The bill provides that a beginner's permit is valid in the operation of certain scooters and cycles between six a.m. and six p.m., except that beginning on the day that daylight savings time goes into effect through the day that daylight saving time ends, the permittee may operate these certain scooters and cycles between six a.m. and eight p.m. The bill provides that a permittee may

not operate a motorcycle, motor scooter, or light motor-driven cycle at any other time unless supervised by the permittee's motorcycle licensed parent or guardian. The bill also increases from ninety days to one hundred eighty days the period which a person must hold a beginner's permit before being eligible for full licensure.

The legislation provides for revisions to the conditional (currently known as "provisional") driver's license issued to eligible individuals that are at least fifteen years of age and less than sixteen years of age and the special restricted driver's license issued to eligible individuals that are at least sixteen years of age and less than seventeen years of age. The bill provides that in addition to current requirements, a driver must complete at least forty hours of driving practice, including at least ten hours of licensed parental- or guardian-supervised driving practice during darkness, in order to be issued a conditional (currently known as "provisional") driver's license or a special restricted driver's license. The holder of conditional driver's license or a special restricted license may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult who is twenty-one years of age or older. This restriction does not apply when transporting family members, or students to or from school. In addition to current requirements, the bill also provides that a person must pass a specified driver's education course in order to be issued a special restricted driver's license. The bill also provides that for purposes of issuing a special restricted driver's license, the Department of Public Safety must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program equivalent to an approved course or program in this State. In addition to current requirements, the bill also specifies that a person must satisfy the school attendance requirements imposed for the conditional license in order to be issued a special restricted driver's license. The bill also provides that a person while operating a motor vehicle under a conditional license or special restricted driver's license (currently this provision relates only to special restricted driver's license holders) who is convicted of a traffic offense (currently this provision applies only to point assessable offenses) or involved in an accident in which he was at fault shall have the removal of the restrictions postponed for twelve months and is not eligible to be issued a regular driver's license until one year from the date of the last traffic offense or accident in which he was at fault or until he is seventeen years of age. Currently, removal of the license holder's restrictions is postponed for six months during which period the licensee must be "free of any traffic convictions."

H. 3933 also provides that it is unlawful to transport a person under fifteen years of age in the open bed or open cargo area of a pickup truck or trailer. This provision does not apply when: (1) an adult is present in the bed or cargo area of the vehicle and is supervising the child; (2) the child is secured or restrained by a seat belt that meets specified standards; (3) an emergency situation exists; (4) the vehicle is being operated in an organized hayride or parade pursuant to a valid permit; (5) the vehicle is being operated while hunting or in an agricultural enterprise; (6) the vehicle is being operated in a county which has no incorporated area with a population greater than three thousand five hundred; or (7) the vehicle has a closed metal tailgate and is being operated less than thirty-six miles an hour. A person

violating this provision is guilty of a misdemeanor and, upon conviction, must be fined twenty-five dollars. No driver's license points or insurance surcharge may be assessed for a violation.

STATUS: H.3933 was approved by the House and Senate and has been signed by the Governor (Act 181). The bill became effective March 5, 2002.

DRIVER'S LICENSES FOR FOREIGNERS (H.4670)

The House and Senate approved H.4670, a bill revising driver's license issuance/renewal for foreigners. Current law allows issuance or renewal of a driver's license to persons from other countries who are present in South Carolina on a student visa or on a work visa, or their dependents. This bill eliminates that provision and provides that for purposes of determining eligibility to obtain or renew a South Carolina driver's license, the term "resident of South Carolina" includes all persons authorized by the U.S. Department of Justice, the U.S. Immigration and Naturalization Service, or the U.S. Department of State to live, work, or study in this country on a temporary or permanent basis who present documents indicating their intent to live, work, or study in South Carolina. The bill provides that these persons are eligible to obtain or renew a driver's license. The bill also provides that a driver's license issued pursuant to these provisions to a person who is not a lawful permanent resident of this country shall expire on the later of the expiration date of the driver's license applicant's authorized period of stay in the United States or the expiration date of the driver's license applicant's employment authorization document. The bill further provides that in no event shall a driver's license issued pursuant to these provisions expire less than one year or more than five years from the date of its issue. Also, the bill provides that a person pending adjustment of status who presents appropriate documentation shall be granted a one year extension of his driver's license which is renewable annually.

STATUS: H.4670 was approved by both the House and the Senate and has been ratified (R.359).

MOTORIST INSURANCE DATABASE PROGRAM ACT

(See INSURANCE section of this document)

SPECIAL LICENSE PLATES

This year, the General Assembly approved various bills creating special license plates. Of special note are H.4652, which creates and provides for "In God We Trust" and "United We Stand" special plates; and H.4432, which creates and provides for "God Bless America" special plates.

H.4652 provides that the fee for the "In God We Trust" plate will be the regular motor vehicle license fee. Before the Department of Public Safety produces and distributes this plate, the bill requires that the Department receive at least four hundred prepaid applications for the plate, or a deposit from an individual or organization of four thousand dollars. This deposit is refundable once an equivalent number of license plate fees is collected for that organization's plate. The bill also requires that before production and distribution of the plate, the Department must receive and approve a plan for marketing the plate. Also, the bill provides that if the Department receives less than three hundred biennial applications and renewals for a particular special license plate, it may not produce additional special license plates in that series. The bill provides that the fee for the special "United We Stand" plate will be $25 every two years in addition to the regular motor vehicle license fee. Funds from the fee for this plate will be distributed to the national "Rewards for Justice" fund which was created to establish rewards for the capture of terrorists. The bill also includes the same requirements for prepaid applications or deposit and for refund of deposit as are provided for the "In God We Trust" plate.

The General Assembly also approved H.4432, which creates and provides for "God Bless America" special license plates. These plates may be produced and distributed after the Department of Public Safety receives at least four hundred prepaid applications for the plate, or a deposit of four thousand dollars from the individual or organization seeking issuance of the plate. The deposit would be refundable once an equivalent amount of license plate fees is collected for that special plate, or would be retained by the Department if the equivalent amount is not collected within four years. The bill requires that the Department must approve a plan to market the plates, and if the Department receives less than three hundred biennial applications and renewals for this special plate, it shall not produce additional special license plates in that series. The fee for this special plate is the regular motor vehicle license fee and a special license fee of sixteen dollars. These funds would be distributed to the Department to defray the DMV's expenses of producing and administering the plates, and remaining funds must be designated for use by the South Carolina National Guard for homeland security.

STATUS: H.4652 (Act 236) and H.4432 (Act 218) were both approved by the House and the Senate and both bills have been signed by the Governor.

STATE/LOCAL GOVERNMENT

FAMILY PRIVACY PROTECTION ACT (S.204)

The General Assembly passed S.204, the Family Privacy Protection Act, and the Governor signed the bill into law on May 1, 2002. This legislation provides that all counties or state agencies, boards, commissions, institutions, departments, or other state entities must develop privacy policies and procedures to ensure that the

collection, use and dissemination of personal information pertaining to citizens of the State is limited to such personal information as is required under the law and necessary to fulfill a legitimate public purpose. Under the legislation, the term 'personal information' means information that identifies or describes an individual, including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account(s) number(s), account or identification number issued by and/or used by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit record(s) or report(s). 'Personal information' does not mean information about boating accidents vehicular accidents, driving violations, boating violations, or driver status. In collecting personal information as authorized, a government entity must advise citizens that the information is subject to public scrutiny or release.

The legislation provides that a person or private entity shall not knowingly obtain or use any personal information obtained from a public body for commercial solicitation directed to any person in this State. A person knowingly violating this provision is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both. Every public body shall notify all requestors of records of the prohibition on the use of personal information obtained from public records for commercial solicitation. All state agencies shall take reasonable measures to ensure that personal information obtained from a public record is not used for commercial solicitation.

S.204 also revises the procedure for blood samples taken from the state's infants for Department of Health and Environmental Control neonatal testing to detect inborn metabolic errors and hemoglobinopathies. The legislation allows parents objecting to the tests to opt out using forms promulgated by DHEC. The bill provides that such a blood sample is confidential and may be released only as the parent or legal guardian of the child from whom a blood sample was obtained, or the child when eighteen years of age or older, directs the department at the time of testing or at any time after that on a form promulgated in regulation by the department. The legislation provides for the conditions under which the blood samples are to be stored and maintained. At the time of testing or at any time after that, on a form promulgated in regulation by the department, the parent or legal guardian of the child from whom a blood sample was obtained, or the child when eighteen years of age or older, may direct the department to: (a) return a blood sample in its entirety and any test results not less than two years after the date of testing; (b) destroy a blood sample in a scientifically acceptable manner not less than two years after the date of the testing; or (c) store a blood sample at minus 20° centigrade but not release the blood sample for confidential, anonymous scientific study. A blood sample released for confidential, anonymous study must not contain information that may be used to determine the identity of the donor. A blood sample released may contain demographic or other statistical information. If scientific study identifies genetic information that may benefit the child, the

department may notify confidentially the parent or legal guardian, or the child if eighteen years of age or older, of this information. Blood samples taken prior to the effective date of the act that have not been stored under the conditions prescribed in the legislation must be properly destroyed. The legislation revises penalties for violations, specifying that fines may not exceed fifty thousand dollars and imprisonment not more than three years.

STATUS: S.204 passed the General Assembly and was signed into law by the Governor on May 1, 2002 (Act 225).

POLITICAL SUBDIVISION'S AUTHORITY TO ESTABLISH A MINIMUM WAGE (H.3289)

The General Assembly passed H.3289, a bill providing conditions for minimum wages that may be established by political subdivisions such as a municipalities, counties, school districts, special purpose districts, or public service districts. The legislation provides that a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate that exceeds the federal minimum wage rate set forth in the Fair Labor Standards Act. Also, a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate related to employee wages that are exempt under the Fair Labor Standards Act. This provision does not limit the authority of political subdivisions to establish wage rates in contracts to which they are a party.

STATUS: Having passed the General Assembly, H.3289 became law without the signature of the Governor on May 15, 2002.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (http://www.scstatehouse.net) and click on "*Publications*," then click on "*Legislative Update*." This will list all of the *Legislative Updates* by date. Click on the date you need.

NOTE: THE LEGISLATIVE UPDATE IS AVAILABLE TO LEGISLATIVE TRACKING SUBSCRIBERS. YOU MAY REGISTER FOR THIS FREE SERVICE ON THE SOUTH CAROLINA GENERAL ASSEMBLY HOME PAGE BY CLICKING ON "ELECTRONIC TRACKING" (UNDER "LEGISLATIVE RESOURCES"), THEN CLICKING ON "ADD NEW SUBSCRIPTION RECORD" AND COMPLETING THAT FORM.